

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/06
 LAST UPDATED 2/16/06

SPONSOR HJC HB CS/174/aSJC

SHORT TITLE Kendra's Law SB _____

ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI*		

(Parenthesis () Indicate Expenditure Decreases)
 * See narrative.

Duplicates SB 335

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Office of the Attorney General (AG)
- Human Services Department (HSD)
- Department of Health (DOH)
- Children, Youth and Families Department (CYFD)
- New Mexico Corrections Department (NMCD)
- Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment

- defines “physician” as a New Mexico licensed medical doctor who is qualified to work with individuals with mental disorders;
- provides that nothing in Kendra’s law shall permit an order to be entered authorizing assisted outpatient treatment regarding a person with a court-appointed surrogate decision-maker who has already been authorized by a court to make substitute decisions regarding the person's mental health treatment; and
- provides that if the physician or provider determines that the patient has attained the capacity to consent to a change in the person's treatment, the physician or provider shall immediately notify the court that the patient is no longer incapacitated and seek an order vacating the court order compelling the patient to undergo involuntary treatment.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 174 (Kendra’s Law) provides that a person may be ordered to obtain assisted outpatient treatment if the court finds that the person:

- 1) is eighteen years of age or older;
- 2) is suffering from a mental illness;
- 3) is unlikely to survive safely in the community without supervision, based on a clinical determination;
- 4) has a history of lack of compliance with treatment for mental illness that has,
 - a) at least twice within the last 48 months, been a significant factor in necessitating hospitalization or receipt of services in a forensic or other mental health unit or a correctional facility;
 - b) resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last 48 months,
 - c) resulted in the person being hospitalized or incarcerated for at least six months and the person was discharged or released within the past 60 days or is to be discharged or released within the next 30 days;
- 5) is unlikely, as a result of mental illness, to voluntarily participate in the recommended treatment pursuant to the treatment plan;
- 6) in view of the person’s treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in serious harm to himself or another person; and
- 7) will likely benefit from assisted outpatient treatment.

A petition for an order authorizing assisted outpatient treatment may be filed in the district court in the county in which the subject is present or reasonably believed to be present. A petition shall be filed only by:

- a person eighteen years of age or older who resides with the subject;
- the subject’s parent, spouse, sibling or child (if the sibling or child is 18 or older);
- the director of a hospital where the subject is hospitalized;
- the director of a public or charitable organization or agency or a home where the subject resides that provides mental health services to the subject;
- a qualified psychiatrist who supervises the treatment of or treats the subject for a mental illness, or has supervised or treated the subject for mental illness within the past 48 months;
- a provider or the social services official of the city or county where the subject is present or reasonably believed to be present; or
- a parole officer or probation officer assigned to supervise the subject.

If the court finds the subject to be an incapacitated person, that grounds for assisted outpatient treatment have been established by clear and convincing proof, and that there is no appropriate and feasible less restrictive alternative, it shall be authorized to order the subject to receive assisted outpatient treatment for an initial period not to exceed six months.

An “incapacitated person” is defined in the HJC substitute for HB 174 as any person who is impaired by reason of mental illness to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the proposed nature of treatment and its consequences or his person

If a provider determines that the a patient requires further assisted outpatient treatment, the provider shall seek a second or subsequent order authorizing continued treatment for a period not to exceed one year from the date of the second or subsequent order.

A physician may request a provider to direct the removal of a patient to an appropriate hospital for an examination to determine if the patient has a mental illness for which hospitalization is necessary if, in the clinical judgment of the physician:

- 1) the patient has failed or has refused to comply with the treatment ordered by the court;
- 2) efforts were made to solicit compliance; and
- 3) the patient may be in need of involuntary admission to a hospital for immediate observation, care and treatment.

Upon the request of a physician, a provider shall be authorized to (or may direct a law enforcement officer to) take into custody and transport a patient to the hospital operating the assisted outpatient treatment program or to any other hospital authorized by the Department of Health to receive such persons. The patient may be retained for observation, care, treatment and further examination in the hospital for up to 72 hours to permit a physician to determine whether the patient has a mental illness and is in need of involuntary care and treatment. However, if at any time during the 72-hour period the person is determined not to meet the involuntary admission and retention provisions of Kendra’s Law, and does not agree to stay in the hospital as a voluntary or informal patient, the patient must be released.

All records or information concerning a party to a Kendra’s Law proceeding shall be confidential and closed to the public. Whoever intentionally and unlawfully releases any such information or records or makes other unlawful use of the records is guilty of a petty misdemeanor.

FISCAL IMPLICATIONS

According to the Department of Health (DOH) and the Human Services Department (HSD), no comprehensive cost studies have been conducted in states with similar legislation. New York’s passage of Kendra’s Law was accompanied by new appropriations to the state mental health system as well as appropriations allocated to counties for increased programs and services.

According to the Administrative Office of the Courts (AOC), based on information the AOC has received regarding the experience of the New York state court system after passage of similar legislation, the fiscal impact on the New Mexico state court system is indeterminable, but will likely be minimal.

The New Mexico Corrections Department (NMCD) anticipates negligible fiscal impact, but suggests that Kendra’s Law may help to prevent some of the crimes committed by people with mental illness, and may thus serve to relieve some of the burden on NMCD of supervising and housing inmates with mental illness. According to NMCD, community treatment under the provisions of this bill would be a cost effective alternative to incarceration, and cost savings utilizing assisted outpatient treatment may be substantial.

SIGNIFICANT ISSUES

Based on legislation originally enacted in New York State, Kendra’s Law is named after Kendra Webdale, a young woman who died in January, 1999 after being pushed in front of a New York

City subway train by an individual who had failed to take the medication prescribed for his mental illness.

According to the AG, this bill seeks to address the important problem of how society can and should deal with mentally ill persons who can be a serious danger to themselves and others. If enacted, the bill could prevent future tragedies where the mentally ill hurt or kill themselves or others.

NMCD notes that the Kendra's Law procedure is very similar to the procedure for a civil commitment. A physician must propose a treatment plan. Counsel will at all times represent the mentally ill person. A hearing is required. The plan must have an expiration date, but if warranted, the treatment may be extended.

NMCD further suggests that pre-release planning can be useful in providing information regarding an inmate's mental health conditions and needs prior to release from prison; and mentally ill parolees/probations who are not compliant with treatment while on probation/parole will have an alternative to parole revocation.

ADMINISTRATIVE IMPLICATIONS

The AG foresees no administrative impact, except in the event of a judicial challenge to the act. However, it notes that there may be significant administrative impact on the courts conducting the proceedings, and on the Department of Health, whose role is likely to be extensive.

TECHNICAL ISSUES

The AG's staff analysis staff raises a number of questions and concerns, including:

- 1) Are there sufficient funding sources identified for mandated treatment?
- 2) The bill permits certain individuals to file a petition for assisted outpatient services. However, the court may not order assisted outpatient treatment unless an examining physician submits a written treatment plan. Family members and friends of the subject may not be in a position to obtain the examining physician's treatment plan.
- 3) Section 8 E explains that if the petitioner is a provider (of comprehensive outpatient services) the court will appoint that provider but does not explain how the provider will be chosen otherwise. It is not reasonable to assume that a family-member petitioner or the court, or even the examining physician, will have knowledge of and access to a qualified provider.
- 4) How will the consent or cooperation of service providers be attained prior to obtaining a court order?
- 5) What will happen in areas of the state where comprehensive services are not available?
- 6) Although a subject may appeal or request modification of an order, it is not clear when such motions may be entertained. There is no specific right to petition for habeas corpus, even if subject was not present at the hearing at which the order was issued.
- 7) Definitions - "assertive community treatment team" should be defined.

DOH and HSD note that Medicaid provisions and private insurance requirements may not authorize a hospital to serve and bill Medicaid or other payers for a three-day hold if the assessment shows no dangerousness meeting the inpatient civil commitment criteria and is primarily for the purpose of establishing an assisted outpatient treatment (AOT) order.

DOH and HSD also suggest that public records statutes and rules regarding the confidentiality of inpatient clinical records may need to be amended/revised to allow exemptions for assisted out-patient treatment.

ALTERNATIVES

DOH and HSD pose the alternative of focusing all available resources on developing state-of-the-art community-based mental health treatment systems in every New Mexico county. According to these two departments, the relative return on investment of the two approaches cannot be determined with certainty from experiences in other states.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to NMCD, existing civil commitment and treatment guardian statues will continue to be used to provide treatment to persons with untreated mental illness.

ML/mt:nt